



EDITORIAL

Biomedical research ethics: An Islamic view part II

KEYWORDS

Islam;
Research;
Ethics;
Consent;
Children;
Women

Abstract In part I of this article I discussed why Islam rejects secularization and this is not because the ethical principles embedded in Islam's teachings are archaic and out of touch with current realities. In addition, I pointed out the agreement between general broad principles of research ethics and Islamic teachings concerning life; which showed clearly that Islam has addressed the regulation of ethics in research more than 14 centuries ago. In this part, I will address two controversial issues concerning women's rights and age of consent for children as possible research subjects in a Muslim community.

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Children as a vulnerable and protected group

Shari'a of Islam is considered the first legislation in the world, which completely separated children from adults concerning criminal responsibilities.¹ This is based on two major factors in Islam: comprehension and ability to choose. When one has no comprehension, there will be no criminal responsibilities. When one has a weak (or impaired) comprehension, there will be disciplinary action but no criminal charges. Therefore, criminal charges can only be brought against those with full comprehension. Accordingly, in Islam a person passes through three stages of decisional capacity from birth to full maturity.^{1–3}

1. The first phase represents complete lack of comprehension; the individual is called the indiscriminating boy. This phase begins at birth and lasts until the age of 7 years. In this phase there are no criminal responsibilities, but civil responsibility, irrespective of the age, is applicable to his finances or belongings. This phase

was indicated by the saying of the Prophet (peace be upon him), when the child reaches seven years order him to pray.²

2. The second phase of weak (or compromised) comprehension; the individual is called a discriminating boy. This phase begins at the age of 7 until the age of puberty. This is based on the Prophet Hadith, which is translated as follows: the pen is alleviated (meaning no punishment) from the crazy till he recovers, the child till he reaches puberty and the sleeping person till he wakes up.⁴ The age of puberty is variable between boys and girls and between individuals of the same sex. The Aima agreed that the age of 15 is the common age of maturity.⁵ Yet there is no indication in the Quran or Hadith of the Prophet (peace be upon him) of such an age limit. Abi-Hanifa and Malek agreed that the age of 18 would be the more suitable age. While others, consider the age of maturity is 17 for females and 19 for males. This is because females reach maturity before males. In Egypt the individual will get his national number and identity card by the age of

16 years and the person will be allowed to obtain his driving license by the age of 18 years and by the age of 21 years, he will be allowed to gain full control of his heritage. Before the law, the age of 17 years and above is the age of criminal responsibility and the individual can be tried as an adult.¹

3. The third phase is the phase of decisional capacity and the individual is called a mature adult when he reaches puberty.

Accordingly, the age of assent with parental permission would be between 7 years and onset of puberty, while the age of consent would be after puberty. This would be above 15 years as it is in most Western countries. To make things clearer, the minimal age of consent is 15 years and different countries would have the right to determine the age of maturity above such an age according to their culture or tradition. In Egypt as mentioned earlier the age of consent would be above 21 years as indicated by the category 44–51 of the Egyptian civil law.⁶

The participation of women in research projects

Those who call for equality between men and women falsely accuse Islam of not giving women their rights.^{7–9} In fact Islam protects women's dignity and rights more than any other regulation, or laws currently used in Western countries. Women are different biologically, physiologically and psychologically from men. In fact, Islam 1400 years ago realized this and looked at women and men equally in issues related to the general legal rights and differentiated between them in their financial responsibilities, heritage, family responsibilities, testimonies and the right to divorce.¹⁰ The Prophet Mohamed (peace be upon him) in his last speech at Arafat mountain instructed Muslims to take care of women. In addition a man asked the Prophet (peace be upon him): Whom from the people deserves my best companionship, the Prophet replied your mother, the man asked and whom else, the Prophet replied your mother, the man asked and whom else, the Prophet replied your mother, the man asked and whom else, the Prophet replied then your father.¹¹

More than 10% of the Quran is concerned with women's affairs; this represents the care of the position of women in an Islamic community.¹² Islam look at women as equal to men except in situations in which they differ physiologically as stated in Al Nisa (4): 124; Al Tawbah (9): 71 and Al Nisa (4): 32 and shown in Table 1.

Table 1 List of Ayat of Quran referred to within the article

Women as equal to men	<ul style="list-style-type: none"> • If any do deeds of righteousness—be they male or female—and have faith, they will enter Heaven, and not the least injustice will be done to them (Al Nisa (4): 124). • The believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey God and His Apostle. On them will God pour His mercy: for God is Exalted in power, Wise (Al Tawbah (9): 71) • And in no wise covet those things in which God hath bestowed his gifts more freely on some of you than on others: To men is allotted what they earn, and to women what they earn: But ask God of His bounty. For God hath full knowledge of all things (Al Nisa (4): 32)
Obedience to men	<ul style="list-style-type: none"> • And women shall have rights similar to the rights against them, according to what is equitable, but men have a degree (of advantage) over them. And God is Exalted in Power, Wise (Al Baqarah (2): 228) • Men are the protectors and maintainers of women, because God has given them the one more (strength) than the other, and because they support them from their means (Al Nisa (4): 34)

In fact discussing the details of the differences in rights between men and women in Islam and the reasons for it is beyond the scope of this article. The important issue I would like to raise is the mechanism of recruitment of women as research subjects in a Muslim community. The woman in Islam represents the cornerstone of the family, and it is the responsibility of a man to ensure her protection and welfare. Two pre-requisites are needed for a female to participate in research: the first is the approval of the family and the second is that the women must consent to the proposed research project. Otherwise, abiding by one of these pre-requisites alone is not enough and is considered therefore unlawful. The approval of the husband is an important pre-requisite because he is the protector of the family, and because the

woman is the cornerstone of the family and her protection against any harm is a crucial issue. If any harm or unanticipated death occurred as a consequence of a woman's participation in research the whole family will suffer. In addition such a prerequisite is stated in the Quran and Sunnah.¹³

The basic rule in Islam is that there is no obedience for anybody if it is against God's rules. The right of obedience to the husband is obtained from the leadership in the family affairs given to man by God as stated in Al Baqarah (2): 228; Al Nisa (4): 34 (Table 1).

The Prophet (peace be upon him) stated that no human is allowed to bow to another human; if I would order someone to bow to somebody I would order the woman to bow to her husband.^{2,13} Also he mentioned God does not look at a woman who doesn't thank for her husband and she can't live without him,¹⁴ it is not allowed for a woman to fast (other than in Ramadan) without the permission of her husband.¹⁴

As mentioned earlier, it is clear in Islam that men have leadership over women and their recruitment in research should only be accepted after taking the permission of the husband first. Only if he agrees, can the woman be approached to see whether she agrees or not and if she refuses so the husband has no right to force her to participate. This is what we as Muslims believe and we are following it even if it seems different from what others think or believe and this should be appreciated by others as a part of respect for our autonomy and freedom.

Conclusion

In a Muslim community a researcher should observe that research and the procedures followed are within the context of Shari'a. For children as research subjects, only parental approval is required for those below the age of 7 years. Above 7 years up to full maturity children ascent and parental permission is required. The age of consent is after the onset of puberty. For uniformity and easy application of the law, the age of 21 years would be the age of consent in Egypt. For women who want to participate in a research project as

subjects, the permission of their husbands or family members is mandatory if they wish to participate in a research study to ensure their protection against exploitation.

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